

Resolution No.:	<u>18-216</u>
Introduced:	<u>July 14, 2015</u>
Adopted:	<u>July 14, 2015</u>

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION NO. H-101 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Damon B. Orobona, Esquire and Susan W. Carter, Esquire, Attorneys for the Applicant, Nova-Habitat, Inc.; OPINION AND RESOLUTION ON APPLICATION; Tax Account Numbers 07-00694755, 07-00694744, 07-00694733 and 07-00694802.

OPINION

Application No. H-101, filed on December 16, 2014 by Applicant Nova-Habitat, Inc., requests reclassification from the R-90 Zone to the Townhouse Floating Zone (TF-12) of Lots 1, 2, 3, and Part of 4, Block A of the Rolling Hills Subdivision, located at 9213 Kensington Parkway and 3619, 3621 and 3623 Glenmoor Drive, Chevy Chase, Maryland. The property consists of 1.41 acres of land (61,349 square feet), including property abandoned on Glenmoor Drive, and it is situated just north of the Capital Beltway I-495 and just east of Kensington Parkway. Applicant proposes to construct up to 16 townhomes, to be known as "Creekside." The proposal is set forth in a Floating Zone Plan (FZP), Exhibit 38(a), which contains an illustrative diagram and specifications of the proposal, as well as other information regarding the development. This is the first rezoning application to be heard under the new Zoning Ordinance, adopted by Ord. No. 17-43 (March 4, 2014); revised by Ord. No. 17-52 (September 30, 2014); effective October 30, 2014.

The owners of three of the lots (9213 Kensington Parkway and 3621 and 3623 Glenmoor Drive) have submitted letters indicated that they have contracted with the Applicant to sell their property and that they authorize Nova-Habitat, Inc. to proceed with the rezoning (Exhibits 21, 22 and 23). The fourth lot is owned by Edward Novak, who testified that he is Nova-Habitat's founder and president. Tr. 11-14. Ownership of all the properties is confirmed by state tax records. Exhibit 35. The remainder of the property consists of a segment of Glenmoor Drive, which had been owned by the County but has been abandoned by Resolution of the County Council, upon the recommendation of the County Executive. The State of Maryland's Highway Administration (SHA), which owns the property along the south and east sides of Glenmoor Drive (Exhibit 36(b), p. 2), stated, in writing, that it had no objection to the abandonment. The letter also indicates that, upon abandonment, SHA had no interest in its 50% share of the roadbed. Exhibit 36(d).

The application was initially reviewed by Planning Department for completeness on December 5, 2014 (Exhibit 3(a)), pursuant to Zoning Ordinance §59-7.2.1.B.3. The application was filed with the Office of Zoning and Administrative Hearings (OZAH) on December 14, 2014, and in accordance with Zoning Ordinance §59-7.5.1., notice of the hearing (Exhibit 24) was mailed out and posted on OZAH's website on December 18, 2014, establishing a hearing date on April 10, 2015 (*i.e.*, within 120 days of filing, as required by Zoning Ordinance §59-7.2.1.C.). At the request of Applicant's counsel, the hearing date was postponed to April 13, 2015. Exhibit 26.

Technical Staff of the Maryland-National Capital Park and Planning Commission ("Technical Staff") reviewed the merits of the application and recommended approval in a report dated March 13, 2015 (Exhibit 28(b)). The Montgomery County Planning Board ("Planning Board") considered the application on March 26, 2015, and unanimously recommended approval, as set forth in a memorandum dated March 30, 2015 (Exhibit 28(a)).

There was no response from the community until April 9, 2015 (*i.e.*, two business days before the hearing) when Diane Cameron of the Audubon Naturalist Society filed a letter objecting to the rezoning based on the possibility of an adverse impact on the Rock Creek watershed. Exhibit 30. On the day of the hearing, a Kensington resident, Piera Weiss, filed a signed email raising questions as to whether the relevant portion of Kensington Parkway can properly be classified as a non-residential street, since the Zone being sought cannot be applied to a property with access to a residential street. Exhibit 31. There has been no additional input from the community.

A public hearing was convened, as scheduled, on April 13, 2015, at which time the Applicant presented evidence and called four witnesses in support of the application. A portion of Applicant's case responded to the concerns raised by the Audubon Naturalist Society and Ms. Piera Weiss. Tr. 32-34, 54-56, 56-57 and 69-71. There was no opposition testimony. The record was held open for two weeks after the hearing, at the Applicant's request, to give its counsel the opportunity to file additional materials. On April 24, 2015, Applicant timely filed a submission addressing a number of issues raised at the hearing (Exhibits 36 and 36(a) – (e)). The record closed, as scheduled, on April 27, 2015. It was reopened on May 12, 2015 (Exhibit 37), to allow Applicant to submit a corrected Floating Zone Plan. Applicant did so on May 14, 2015 (Exhibit 38(a)), and Technical Staff approved the changes to the FZP on May 18, 2015 (Exhibit 39). The record closed again on May 19, 2015.

The Hearing Examiner recommended approval of the rezoning application (provided that the Council first approved the abandonment discussed above) on grounds that the proposed reclassification and development will meet the standards set forth in the new Zoning Ordinance that went into effect on October 30, 2014, and that it will be consistent with the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i).

To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report and Recommendation, dated May 21, 2015, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The subject property, which has an area of about 1.41 acres (61,349 square feet), is located just north of the Connecticut Avenue off ramp of the Capital Beltway I-495, in Chevy Chase, Maryland. The 1.41 acres of the subject site (61,349 square feet) includes 47,560 square feet from the four lots described above and 13,789 square feet of right-of-way abandoned by the County on Glenmoor Drive. SHA also owns a small portion of Lot 4 in the southern corner of the lot, as shown on the plat maps (Exhibits 29(j) and (k)). That SHA property is not part of the rezoning application site and should not be confused with the abandonment area referenced in SHA's letter (Exhibit 36(d)). That letter refers only to the portion of Glenmoor Drive abandoned by the County, and SHA indicates that it has no interest in its 50% share of that roadbed.

Technical Staff describes the subject site as follows (Exhibit 28(b), p. 2):

The property is currently improved with four single-family detached homes that were developed under R-90 zoning standards. Today, the tract is predominantly cleared with no forested areas. There are a few specimen trees on the property that are within 100 feet of the site boundaries as identified on the attached existing conditions plan. A 100-year floodplain is located on a small portion of the subject property's northeast boundary shared with adjacent Rock Creek Park. All proposed improvements to the site are located outside the floodplain area. The property is not located within a Special Protection Area. The Maryland Department of Natural Resources determined there are no state or federal records for rare, threatened or endangered species within the boundaries of the proposed project . . .

Staff also notes that when the Rolling Hills Subdivision was originally platted in 1951, Glenmoor Drive contained approximately 36 single-family homes that comprised the Rolling Hills neighborhood; however, "the property was removed from the Rolling Hills community when the Capital Beltway (I-495) was subsequently constructed in the 1960s. The four single-family detached homes that comprise the subject property are aging and are [now] isolated from the Rolling Hills neighborhood" Exhibit 28(b), p. 2.

Technical Staff states that Kensington Parkway, which borders the subject site and accesses Glenmoor Drive, is "a nonresidential street per the Kensington-Wheaton Master Plan." Exhibit 28(b), p. 11. The Kensington/Wheaton Master Plan (p. 96), characterizes Kensington Parkway as a park road, not a residential road. Tr. 56-57.

In addition to a Plat Map, and consistent with Zoning Ordinance §59-7.2.1.B.2.g.v.(b), Applicant has provided an "Existing Conditions Plan," certified by a professional (Exhibit 29(e)). It shows existing site conditions and the vicinity within 100 feet, including existing topography; watershed; Special Protection or Primary Management areas [there are none]; floodplains; wetlands; streams and associated buffers; forests; the absence of rare, threatened, or endangered species; and that the property is not on the Locational Atlas and Index of Historic Sites.

The surrounding area must be identified in a Floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a Floating zone application than in evaluating a Euclidean zone application. In general, the definition of the

surrounding area takes into account those areas that would be most directly affected by the proposed development.

Applicant's land use expert, Joshua Sloan, described the boundaries of the surrounding area as "Beach Drive to the north, Rock Creek Park to the east, the off ramp for the Capital Beltway to the south, and Connecticut Avenue to the west." Tr. 40. That defined area is depicted in Exhibit 25(n), and the District Council accepts that definition.¹ As stated in Applicant's Pre-hearing Submission (Exhibit 29(a), p. 3), "There are no land uses in the surrounding area other than parkland and one temporary WSSC industrial yard." Mr. Sloan, added, "There's not much to be compatible with, except for the parkland and then the highway. So the parkland is the key issue for our development." Tr. 41. The Audubon Naturalist Society describes the nearby parkland as "Rock Creek's wooded riparian area" (Exhibit 30). It is not disputed that the nearby parkland contains forest, stream valley buffers and wetlands, as well floodplains which actually extend 20 to 30 feet into the northern area of the subject site.

Technical Staff reports the following zoning history (Exhibit 28(b), p. 3):

At the time of the 1954 comprehensive rezoning of the County, the subject property was zoned in the R-90 zoning classification. In 1958, when the Regional District was expanded to include Upper Montgomery County, the associated comprehensive map amendment confirmed the R-90 zoning classification. The property has remained in the R-90 Zone ever since.

The Hearing Examiner added that the site's zoning was not changed by the District-wide rezoning on October 30, 2014, which resulted from District Map Amendment G-956 (adopted July 15, 2014) and modified by Sectional Map Amendment G-965 and Corrective Map Amendments G-967 through G-973.

The Applicant proposes to construct sixteen, four-story townhouse units, each with a two-car garage and a driveway capable of accommodating an additional two cars. The homes and the garages will front on a private street that will run between groups of townhouses and will be accessed from Kensington Parkway. The maximum height of the units would be 50 feet, but they will be designed to give the appearance, from the street, of three-story townhouses. Exhibit 29(a), pp. 5-6.

Applicant further describes its proposed development in its Pre-hearing Statement (Exhibit 29(a), pp. 4-6):

... Creekside's proposed site layout reflects a traditional site design where all townhomes will front a private street that bisects the property. The front of the townhomes will provide the main pedestrian realm of the community, along with

¹ Technical Staff shows the same map in its report (Exhibit 28(b), p. 4), but Staff's textual description of the surrounding area has a shorter western boundary, extending only to "... Kensington Parkway to the west and the WSSC's Water Tunnel Shaft project on the west side of Kensington Parkway . . .," rather than all the way to Connecticut Avenue, as shown on the map. The Hearing Examiner accepted the broader area, stretching all the way to Connecticut Avenue on the west, as the defined surrounding area.

small pocket parks that can also serve as public gathering spaces to further activate the public realm. The public realm of the community has been designed to increase interaction amongst neighbors through residents congregating in the community's open spaces or through the use of outdoor living features. Similarly, connections to Rock Creek Park will be provided in the proposed community, which will serve to connect future residents to this substantial natural amenity and increase the functionality and use of the existing parkland infrastructure that includes bike trails, walking trails, exercise equipment, picnic areas, and nature watching.

The rears of the homes have been purposefully designed to back to the natural serenity of the park or a wooded setback. These portions of the townhomes will provide residents with private spaces that will allow them to enjoy their tranquil surroundings apart from the shared public realm of the greater community.

Additionally, the townhomes are strategically located to act as a sound barrier to mitigate any noise impacts stemming from the site's proximity to the 495 off-ramp. A preliminary noise analysis shows that at-grade noise levels are approximately 66-67 dBA on the southern portion of the site nearest the off-ramp. The Petitioner is committed to ensuring that internal noise levels will be at 45 dBA and that exterior rear yards will be at 65 dBA or better through the use of site grading techniques and other noise mitigations measures. A further noise analysis will occur at the time of site plan review.

The design intention for the project is to create an appearance of a "natural" architecture with wood, stone, and other natural materials that will complement the unique natural settings abutting the project. The architectural design of the project features two townhouse models with variations between the two units. The units backing to Rock Creek Park (on the north side of the site) are anticipated to be three stories where the homes front the main drive isle and public realm of the community. These units will also feature a walk-out basement facing Rock Creek Park. The top floor in these units will be stepped back to enable a roof top terrace. However, when viewed from street level, a pedestrian will only notice three stories because of the top-level step back. The six (6) units to the south are anticipated to be four story units with a step back on the front facade to accommodate a roof top terrace facing Rock Creek Park. As such, these units will also appear as three story units when viewed at street level. The three-story facades are anticipated to be approximately 35 feet in height.

Pursuant to Zoning Ordinance §59-7.2.1.B.2.g., every application for rezoning to a Floating zone must be accompanied by a "Floating Zone Plan" (FZP) that contains the following information:

- i. building location, density, massing, height, and anticipated use;*
- ii. locations of open spaces and preliminary stormwater management strategy;*
- iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;*
- iv. any binding element on the application. An applicant who proposes a binding*

element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and

v. the following additional information:

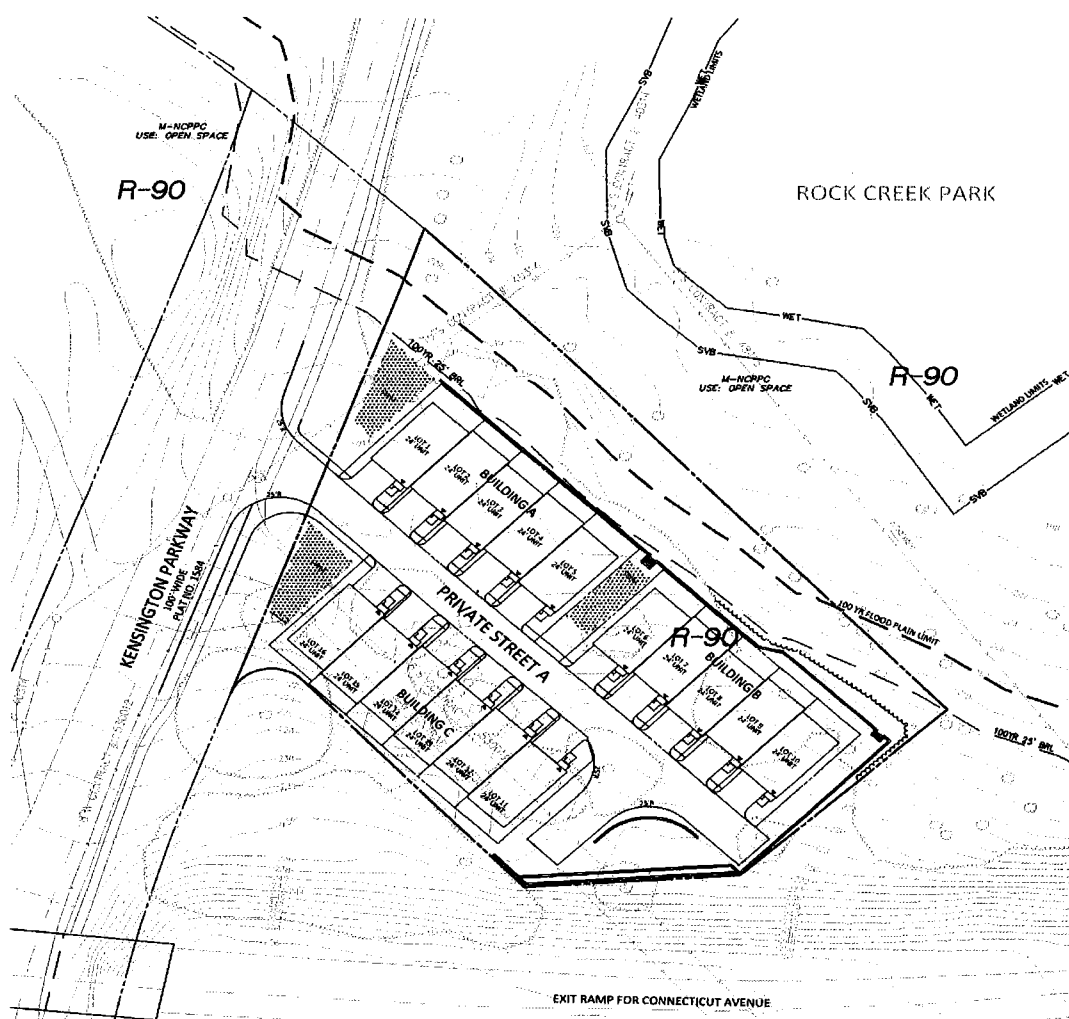
- (a) current and proposed zone;*
- (b) a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;*
- (c) existing or approved adjacent land uses, buildings, and rights-of-way;*
- (d) a Traffic Study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and*
- (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications;*

Applicant has met these requirements by filing its revised Floating Zone Plan (Exhibit 38(a)) and related documents (Exhibits 29(c)-(l)). The FZP shows the three groups of proposed townhomes, all facing the central private street which will serve as the single access to the site from Kensington Parkway. Applicant's land planner, Joshua Sloan, testified that the layout of the units, roughly northwest to southeast, is set based on the grade, which slopes generally from the south down towards the northwest corner. The units step with the grade so that they are always about 30 feet above grade level from the new private road that will be established. About 20 percent of the site will remain an open space for environmental buffers and protections, and stormwater management facilities will take care of the runoff from the new road and the rooftops. There is no forest on the site, but there are some significant trees, which will all be mitigated through tree variances, and Applicant will be planting at least 15 three-inch caliper trees primarily along the forested buffer to further protect the offsite floodplain and stream valley. Each building will have its own garage plus a driveway that is about 20 feet deep, so parking will be ample. There will be a turn around to accommodate fire and rescue access at the southeast side of the site. Retaining walls will be used to minimize the limits of disturbance. All of the townhouses and their garages will front on the new private road. Tr. 45-47. Applicant's plans include a Circulation Plan (Exhibit 29(h)); a Fire Access Plan (Exhibit 29(i)); and an Open Space Plan (Exhibit 29(g)). The entire development will be completed in one stage, and there are no proposed binding elements.

Technical Staff characterized the proposal as reflecting "a traditional site design," noting that (Exhibit 28(b), p. 5):

... the private streets associated with this proposed development will serve as a means of ingress and egress for future residents and visitors of the proposed community. The proposed project will be designed to increase interaction among neighbors through residents congregating in the community's open spaces or through the use of outdoor living features. Pedestrian connections along Kensington Parkway to Rock Creek Park will connect future residents to this natural amenity and increase the functionality and use of the existing parkland infrastructure that includes bike trails, walking trails, exercise equipment, picnic areas, and nature watching.

A full copy of the Floating Zone Plan (Exhibit 38(a)) is reproduced in the Hearing Examiner's report, and the site layout diagram from the FZP is set forth below:



Zoning involves two basic types of classifications, Euclidean zones and Floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365

(1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height.

A Floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a Floating zone by demonstrating to the Council that the proposed development will meet the standards set forth in the new Zoning Ordinance that went into effect on October 30, 2014, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i).

Montgomery County has many Floating zones, including the TF Zones. The TF-12 Zone contains development standards and a post-zoning review process that generally delegate to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council has a broader and more discretionary role in determining whether to approve a rezoning.

Under the old Zoning Ordinance, a request to rezone a property to a Residential Townhouse Floating zone (e.g., RT-10) required three Council findings: 1. That the proposed development would satisfy the purpose and requirements of the new zone; 2. That the proposed use would be compatible with surrounding development; and 3. That the rezoning would be in the public interest. The new Zoning Ordinance requires a more structured and detailed analyses for the Council's review of rezoning applications, as follows:

Zoning Ordinance §59-7.2.1.E. establishes a set of "Necessary Findings" the District Council must make for any Floating Zone application:

1. *A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.*
2. *For a Floating zone application the District Council must find that the floating zone plan will:*
 - a. *substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*
 - b. *further the public interest;*
 - c. *satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;*
 - d. *be compatible with existing and approved adjacent development;*
 - e. *generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and*
 - f. *when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.*

As is apparent, Finding 2.c. of these "Necessary Findings" incorporates requirements spelled out elsewhere in the Code—specifically under sections that establish "the intent, purposes and standards" of the TF-12 Zone. Those standards are found in Sections 59-5.1.2., 5.1.3., 5.2.1., 5.2.2., 5.2.3., 5.2.4. and 5.2.5. of the new Zoning Ordinance. This Opinion will first address the general "Necessary Findings" set forth above, and will then review the specific standards which must be met to rezone to a TF-12 Zone.

When the reclassification sought by an applicant is recommended by the Planning Board, approval of the rezoning by the District Council requires an affirmative vote of 5 Council members; however, when the Planning Board does not recommend the reclassification sought (or if approval would be contrary to the recommendation of the municipality in which the property is located), the Zoning Ordinance requires an affirmative vote of 6 members of the District Council for approval. Zoning Ordinance §59-7.2.1.F.2. The Planning Board did recommend approval of the rezoning and no municipality is involved in this case, so a simple majority of 5 members of the District Council is required for approval.

A. The "Necessary Findings" Required by Zoning Ordinance §59-7.2.1.E.2.

For a Floating zone application the District Council must find that the floating zone plan will:

- a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*

The Applicant's site is located in the area subject to the *Master Plan for the Communities of Kensington-Wheaton* (May 1989, as amended April 1990). The Master Plan makes no site-specific recommendation for the property. Technical Staff made the following comments about the applicable Master Plan (Exhibit 28(b), pp. 8-9):

The Property falls under the land use guidance of the 1989 Master Plan for the Communities of Kensington-Wheaton (Kensington-Wheaton Plan). The Kensington-Wheaton Plan gives no specific recommendations for the subject property. On page 64, the Master Plan's land use map provides no recommendation for the subject property. Despite the Master Plan's absence of land use guidance for the site, staff finds that the property is an appropriate location for townhouse development given its locational characteristics.

The project will provide 16 townhomes in a location that is close to some of the County's major employment centers and entertainment districts, such as downtown Bethesda and White Flint. The site's location is within close proximity to multiple transit stations and bus stops. The Property is directly on Ride On Route 33 that provides a direct connection from the site to the Medical Center Red Line Metro Station and Glenmont Red Line Metro Station. The site provides convenient biking access to many nearby employment centers: it is 1.8 miles from NIH and Walter Reed, 1.5 miles from the Kensington MARC Station, and 1.6 miles from Kensington Town Center. The property is currently served by public water and sewer and fire and rescue facilities. The Bethesda-Chevy Chase School Cluster is not in a moratorium.

Technical Staff also noted (Exhibit 28(b), p. 10):

The Kensington-Wheaton Master Plan has not been updated since 1989, over 25 years ago. Since the 1980s, substantial change has occurred in this area of the County, including tremendous population, employment, and retail growth in the nearby downcounty areas. Further, thousands of new jobs were brought to the area with the relocation of Walter Reed Medical Center. Housing preferences have shifted to smaller, more urban dwellings, such as townhomes.

Technical Staff concluded that “. . . the proposal conforms to the general intent and objectives of the 1989 Kensington-Wheaton Master Plan.” Exhibit 28(b), p. 15. In its opening summary, Staff stated, “In general, the proposed development . . . furthers the goals of the 1989 Kensington-Wheaton Master Plan . . .” Exhibit 28(b), p. 2. These findings were supported by the Planning Board, which concluded that the rezoning application “. . . is in harmony with the general intent and objectives of the *Master Plan for the Communities of Kensington-Wheaton*.” Exhibit 28(a).

On page 28 of the Master Plan, the Land Use and Zoning “Goals and Objectives” include:

- To protect and stabilize the extent, location, and character of existing residential and commercial land uses,
- To maintain the well established low- to medium-density residential character which prevails over most of the planning area.
- To ensure that zoning and land use recommendations for sites which have a potential for future development are consistent with the goals of land use stabilization and compatibility with nearby existing development.
- To preserve the identity of residential areas along major highway corridors, to soften the impact of major highways on adjacent homes and to strengthen the distinction between commercial and residential uses,

Joshua Sloan, Applicant’s land planner, opined that the proposed development fulfills the general Master Plan objectives of increasing the mix of housing and of protecting stable residential neighborhoods. Tr. 48. Mr. Sloan agrees with Technical Staff that the 1989 Kensington/Wheaton Master Plan makes no specific recommendation for the subject site. There are general recommendations to increase the mix of housing to support the employment areas, and there is a note that Floating zones should not be applied where they can have an impact on existing stable neighborhoods, which he does not believe applies to this site. The Master Plan does not make any recommendations for or against a Floating zone in this area. The Land Use Plan on page 64 of the Master Plan shows hatching in almost all areas, but there is no hatching on the subject property and no map key for that blank. Although the 1958 comprehensive rezoning confirmed the R-90 zoning, it was not a specific recommendation for this site. Tr. 41-44.

In the transportation and mobility plan (Chapter 5), the Master Plan seeks to promote non-motorized mobility. The proposed development has available public transit, including a bus line at the site that goes right to a Metro station and a future purple line station within about a mile. Tr. 49. The Master Plan (page 36) also seeks to protect water quality of the streams, to prevent erosion and flood damage in the Kensington/Wheaton area and to promote conservation. Again, Applicant is proposing to protect the nearby environmentally sensitive areas with stormwater

management, utilizing environmental site design, and by staying out of stream buffers. Tr. 51 and 68-71.

Based on this record, the Hearing Examiner found that Applicant's proposed development will substantially conform with the recommendations of the Master Plan for the Communities of Kensington-Wheaton and will further its stated goals. The District Council agrees and so finds.

b. further the public interest;

Applicant's land planner, Joshua Sloan, testified that this proposal would further the public interest of the County. It will provide a modest increase in density where it can offer housing to accommodate the increases in employment opportunities in the nearby Walter Reed Hospital and the federal buildings to the southwest. It is located in an area that is not going to negatively impact schools. It is in an area that has infrastructure that can accommodate it. It will be increasing the amount of stormwater treated, and thereby further protecting the important Rock Creek Park to the northwest of the site. And, it will be mitigating any impacts to trees and providing a significantly greater tree canopy with replantings on the site. Tr. 53-54.

Technical Staff agreed, stating (Exhibit 28(b), p. 15):

The project furthers the public interest in many regards. The redevelopment of the site will replace four aging single-family houses with up to 16 townhouses that fit within the character of the surrounding area. Connections to the nearby Rock Creek Park will provide opportunities for the new residents to enjoy the existing parkland. Environmental improvements to the site will be provided in the form of updated and environmentally sensitive stormwater management facilities. Additional housing at this location will provide support for the many nearby employment centers and commercial businesses near the site. The site is already served by nearby transit infrastructure, such as the Medical Center Metro, Ride On Bus Route 33, the Kensington MARC Station, and the Capital Beltway. The site is also near the future Connecticut Avenue Purple Line station. The improvements proposed are for an infill location that has existing public water and sewer capacity and school system capacity. All of the above reasons justify a sufficient relationship to the public interest to warrant the proposed project.

Based on this undisputed evidence, the District Council finds that the proposed development will further the public interest.

c. satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;

For the reasons set forth in Parts V.B., V.C., V.D. and V.E. of the Hearing Examiner's report, as summarized below, the District Council finds that the proposed Floating Zone Plan will satisfy the intent, purposes and standards of the proposed zone and the requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

Land planning expert, Joshua Sloan, testified that the proposed development will be compatible with the surrounding area. It will be expanding the park-like setting and incorporating it into the park-like environment. There are no neighbors to negatively impact. The primary way it protects the neighborhood is by taking a lot of the pressure of redevelopment off of those existing neighborhoods and placing something with a little bit higher density in an area where it will not have negative impacts. Tr. 48-50, 60-63. Technical Staff agreed, stating (Exhibit 28(b), p. 15):

The proposed project is compatible with its surrounding conditions. There are no immediately adjacent homes near the subject property, so there will be no adverse impact from the proposal to any nearby resident. The townhomes will be designed with a height, massing, and building materials that will ensure the project's compatibility with its natural parkland surroundings.

Based on this undisputed evidence, the District Council finds that the proposed development will be compatible with existing and approved adjacent development.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts;

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.

The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP). While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, as spelled out in Zoning Ordinance §59-7.2.1.E.2.e, quoted above, and in §59-5.1.2.A.2, which will be discussed below.

The principal tool used by the County to evaluate the ability of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. An LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips. For developments that will generate fewer than 30 peak-hour trips, only a traffic statement need be filed,² as was done in the subject case. See Exhibit 8.

² Planning Department's *LATR and TPAR Guidelines* (2013), p. 6.

Applicant employed Cherian Eapen, an expert in transportation planning and traffic engineering, who prepared a Traffic Statement (Exhibit 8), which he summarized at the hearing. Mr. Eapen testified that, based on the Planning Department's LATR Guidelines, the proposal for 16 townhomes will generate approximately 8 peak-hour trips in the morning peak hour, and 13 peak-hour trips during the weekday evening peak period. Subtracting out the traffic generated by the four homes currently on the site (4 trips in the morning and 4 trips in the evening), the proposed development will result in an addition to traffic of about 4 peak hour trips in the morning, and 9 peak hour trips in the evening. These figures are reflected in the Traffic Statement (Exhibit 8), and as noted there, the Transportation Policy Area Review (TPAR) requirements can also be met by making a payment at the time building permits are issued. Tr. 74-75. Mr. Eapen testified that, in his opinion, this proposal would not generate traffic exceeding the critical lane volume or volume capacity ratio standard applicable under the Planning Board's LATR Guidelines, and both the TPAR and LATR findings will be met. Tr. 75-76.

Technical Staff confirmed Mr. Eapen's analysis (Exhibit 28(b), p. 16):

The proposed development will generate only 8 a.m. peak hour trips and 13 p.m. peak trips, a diminimus impact on surrounding roadways; a traffic study is not required to satisfy the LATR test because the proposed use generates fewer than 30 total peak hour-hour trips. If approved and a future preliminary plan review, the TPAR must be satisfied under the approved LATR and TPAR Guidelines. . . .

Based on this record, the District Council finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, and that transportation facilities are adequate and will not be adversely affected by the proposed development.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

This provision is inapplicable because the Floating zone being proposed is residential.

B. The Intent of the Zone as set forth in Section 59-5.1.2.

The next step in the review process is a determination of whether the proposed development will satisfy the intent of the TF-12 Zone. These standards are set forth in Zoning Ordinance §59-5.1.2:

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section 7.2.1. The intent of the Floating zones is to:

- A. *Implement comprehensive planning objectives by:*
 - 1. *furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. *ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
 - 3. *allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*
- B. *Encourage the appropriate use of land by:*
 - 1. *providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
 - 2. *allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
 - 3. *ensuring that development satisfies basic sustainability requirements including:*
 - a. *locational criteria,*
 - b. *connections to circulation networks,*
 - c. *density and use limitations,*
 - d. *open space standards,*
 - e. *environmental protection and mitigation; and*
- C. *Ensure protection of established neighborhoods by:*
 - 1. *establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
 - 2. *providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
 - 3. *allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

The first test listed under this section is whether the proposal will implement comprehensive planning objectives:

- A. *Implement comprehensive planning objectives by:*
 - 1. *furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. *ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
 - 3. *allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property;*

The standard set forth in §59-5.1.2.A.1. is repetitive of the previously discussed Master Plan standards, and for the reasons set forth above, the District Council finds that the proposed Floating Zone plan will further the goals of the general plan, applicable master plan, and functional master plans.

As to §§59-5.1.2.A.2 and A.3, land planner Joshua Sloan testified that the proposed use is supported by existing and planned infrastructure, in that there is available transit, including a bus line that goes right to the Metro and a future purple line station, within about a mile. There are also existing facilities for utilities that can be tied into, so there will not be a need for increased services. Water and sewer service is provided for the site without the need for an upgrade or a pump station. All three elementary, middle and high school levels are under 105 percent of capacity, so there will not be an extra impact fee for schools. The site can also access existing circulation networks, in that there is a bike route that goes directly to services within three miles, both to the north in Kensington, and to the south in Chevy Chase. It is also within three quarters of a mile of recreation facilities, provided by a public park and a long walking path. Tr. 48-51. Technical Staff agreed that "The subject application will be adequately served by public facilities [for water and sewer, schools, police, fire and rescue]," as set forth on pp. 7-8 of the Staff report (Exhibit 28(b)).

Technical Staff also stated that the subject site "is an appropriate location for townhouse development given its locational characteristics." Exhibit 28(b), p. 8. Staff noted (Exhibit 28(b), p. 9):

The project will provide 16 townhomes in a location that is close to some of the County's major employment centers and entertainment districts, such as downtown Bethesda and White Flint. The site's location is within close proximity to multiple transit stations and bus stops. The Property is directly on Ride On Route 33 that provides a direct connection from the site to the Medical Center Red Line Metro Station and Glenmont Red Line Metro Station. The site provides convenient biking access to many nearby employment centers: it is 1.8 miles from NIH and Walter Reed, 1.5 miles from the Kensington MARC Station, and 1.6 miles from Kensington Town Center. The property is currently served by public water and sewer and fire and rescue facilities. The Bethesda-Chevy Chase School Cluster is not in a moratorium.

Based on this record, the District Council finds that the proposed development will satisfy the intent standards for the TF-12 Zone as set forth in §59-5.1.2.A.

The second portion of the intent provision under this section asks whether the proposal will encourage the appropriate use of land:

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
- 2. allowing various uses, building types, and densities as determined by a*

property's size and base zone to serve a diverse and evolving population; and
3. *ensuring that development satisfies basic sustainability requirements including:*

- a. locational criteria,*
- b. connections to circulation networks,*
- c. density and use limitations,*
- d. open space standards,*
- e. environmental protection and mitigation; and*

Land Planner Joshua Sloan testified that the proposal will encourage the appropriate use of land, as called for in Section 59-5.1.2.B, based on the factors listed in response to the previous section and because the project will also provide housing for the expanding employment base, federal government primarily, just to the southwest of the site. Tr. 48-51. Technical Staff agreed, stating (Exhibit 28(b), pp. 9-10):

The proposed project encourages the appropriate use of land by creating a sense of place that can significantly improve upon the poorly planned urban conditions that severed the outlying homes of the subject property from their original neighborhood. The proposal will have no negative impact upon any nearby residential neighborhood or commercial activity, as the subject property is encircled by natural or parkland settings and the Capital Beltway. The project is adequately set back from Rock Creek Park's walking and biking trails and picnic areas so that the creation of a neighborhood community in this location will not adversely affect the current use of the park.

The project will also provide numerous other benefits, such as providing much-needed housing choice near major downcounty employment centers and commercial settings (NIH, Walter Reed, Bethesda CBD, White Flint, Chevy Chase Lake Shopping District, and Kensington Town Center), increasing density near existing and planned transit infrastructure (Medical Center Metro Station, Connecticut Avenue Purple Line Station, Kensington MARC Station, Ride On Route 33 between Medical Center and Glenmont Metro stations, and easy access to the Capital Beltway).

This application is an example of using a flexible floating zone to respond to changing economic and demographic trends between sectional map amendments. The Kensington-Wheaton Master Plan has not been updated since 1989, over 25 years ago. Since the 1980s, substantial change has occurred in this area of the County, including tremendous population, employment, and retail growth in the nearby downcounty areas. Further, thousands of new jobs were brought to the area with the relocation of Walter Reed Medical Center. Housing preferences have shifted to smaller, more urban dwellings, such as townhomes.

Staff believes that the proposed project provides the appropriate use of land by responding to changing demographic trends to serve a diverse and evolving County population.

Based on this undisputed evidence, the District Council finds that the proposed development will satisfy the intent standards for the TF-12 Zone, as set forth in §59-5.1.2.B., and will encourage the appropriate use of the land.

The third prong of the intent provision for the zone seeks to ensure protection of established neighborhoods:

- C. *Ensure protection of established neighborhoods by:*
1. *establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
 2. *providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
 3. *allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

Land Planner Joshua Sloan testified that, in accordance with Section 5.1.2.C, the proposed development will be compatible with the surrounding area. It will be expanding the park-like setting and incorporating it into the park-like environment. There are no neighbors to negatively impact. The primary way it protects the neighborhood is by taking a lot of the pressure of redevelopment off of those existing neighborhoods and placing something with a little bit higher density in an area where it will not have negative impacts. Tr. 48-50.

Technical Staff agreed, stating (Exhibit 28(b), p. 10):

The proposed project is compatible with the surrounding area. The project has been specifically designed to blend well with its natural and parkland setting, with connections from the development to adjacent sidewalks and trails. There are no immediately adjacent homes or commercial uses near the subject property. The proposed townhouse community is buffered by wooded setbacks or transit infrastructure on all sides, so there will be no adverse impact from the proposal on any established neighborhood. The project's scale has been established at a height and massing that allows the surrounding tree cover to buffer and screen the townhomes from any nearby users of Rock Creek Park. Further, the final design of the townhomes, including the proposed construction materials, will be selected to allow the homes to be compatible with the site's natural woodland setting.

The compatibility requirements of this section are repetitive of the compatibility findings required in §59-7.2.1.E.2.d, above. As was stated there, the District Council finds that the proposed development will be compatible with existing and approved adjacent development.

C. The Applicability of the Zone as set forth in Section 59-5.1.3.

Section 59-5.1.3. of the new Zoning Ordinance sets up a series of tests to determine whether the requested Floating zone may be applied to the site in question. To avoid repetition, each subsection is listed separately below, followed by the District Council's finding on each:

- A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.*

Subsection “A” is not applicable since the subject site is in a Residential zone, not in either an Agricultural or a Rural Residential zone.

- B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application. For properties with a master plan recommendation for a Floating zone for which an application can no longer be made as of October 30, 2014, the following table identifies the equivalent Floating zones for which an applicant may apply . . .*

The referenced “table” has been omitted since the Kensington-Wheaton Master Plan neither recommends nor opposes a Floating zone on the subject site. It is silent on the issue. Thus, Subsection “B” is not applicable to this case.

- C. If a Floating zone is not recommended in a master plan, the following apply:*

- 1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.*

Subsection “C” is applicable since the Kensington-Wheaton Master Plan does not expressly recommend a Floating zone on the subject site. Subsection “C.1.” requires the maximum density to be calculated in accordance with Section 59-5.2.5, which is done below in the discussion of that section. As shown there, the proposed use of 16 townhomes on 1.41 acres is within the maximum density allowed (12 units per acre). No density bonus has been requested in this case.

2. Residential Base Zone

- a. When requesting a Residential Detached Floating (RDF) zone for a property with a Residential base zone:*

- i. If neither commercial uses nor any increase in density above that allowed by the base zone is requested, there are no prerequisites for an application;*
- ii. If a commercial use or an increase in density above that allowed by the base zone is requested, the application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.*

Subsection “C.2.a” is not applicable since the Applicant is not requesting a Residential Detached Floating (RDF) zone.

- b. When requesting a Townhouse Floating (TF) zone, Apartment Floating (AF) zone, or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone:*

- i. The property must front on a nonresidential street or must confront*

or about a property that is in a Residential Townhouse, Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone; and
ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.

Subsection "C.2.b" is applicable since the Applicant is requesting a Townhouse Floating (TF-12) zone for a property with a Residential base zone (R-90). Thus, it must meet both tests set forth in subsections "C.2.b.i. and ii." As discussed above, Kensington Parkway, in the area of the subject site, is classified as a park road, not a residential street, and Glenmoor Drive is to be abandoned as a necessary prerequisite to this project. Therefore the first test is satisfied. As will be seen below, the application meets a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D., thereby satisfying the second test in this subsection.

c. When requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF) for a property with a Residential base zone:

i. The property must front on a nonresidential street or must confront or about a property that is in a Commercial/Residential, Employment, or Industrial zone; and

ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.

d. When requesting any Industrial Floating zone (ILF or IMF) for a property with a Residential base zone:

i. The property must about a property in an Industrial zone; and

ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.

Subsection "C.2.c." is not applicable since the Applicant is not requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF).

3. Non-Residential Base Zone

When requesting a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.

Subsection "C.3." is not applicable because the base zone in this case is residential, and Subsection "C.3." applies only to sites with a non-residential base zone.

Section 5.1.3.D. Prerequisites

Prerequisites for the Townhouse Floating Zones are listed in the Table below. The first two columns of the Table duplicate the Table in the Zoning Ordinance. In the right-hand column, Technical Staff has checked off the two prerequisites in each of the three categories that the application satisfies in this case (Exhibit 28(b), p. 12):

Category	Prerequisite Choices	Met
Transit & Infrastructure	At least 75% of the site is within ¼ mile of a Level 3, ½ mile of a Level 2, or ¾ mile of a Level 1 transit station/stop.	
	The site has frontage on and vehicular, bicycle, and pedestrian access to at least 2 roads, at least one of which is nonresidential.	
	The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.	√
	All signalized intersections within ¼ mile of the site boundary are operating below the applicable congestion standard.	√
	The project is age-restricted or senior housing, or if proposing development that may generate students, the site must not be in an area that is under moratorium due to school capacity or result in a school utilization rate greater than 120% because of the proposed development. For any site within 2 school clusters, only the portions of the site that satisfy this requirement can proceed.	√
Vicinity & Facilities	The site is in a transitional location between property in an existing Residential Multi-Unit, Residential Townhouse, or non-Residential zone and property in a Residential Multi-Unit, Residential Townhouse, or Residential Detached zone.	
	The site is adjacent to a bicyclist route that provides access to commercial services within 3 miles.	√
	The site is adjacent to a route that provides access to an existing or master-planned school within ½ mile.	
	The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of existing public park and recreation facilities that satisfy a minimum of 30% of the recreation demand under the Planning Board's Recreation Guidelines, as amended, within ¾ mile.	√
	The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within ¼ mile.	
Environment & Resources	The limits of disturbance for the development will not overlap any stream, floodplain, wetland, or environmental buffer or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.	√
	The site does not contain any forest or, if forest is present, the limits of disturbance for the development will not reduce the forest cover to less than an area of 10,000 square feet and width of 35 feet at any point.	
	The site does not contain any rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.	√
	The site is on land containing contaminated soils and is developed in conjunction with an environmental Voluntary Cleanup Program under the Maryland Department of Environmental Protection.	
	The site is currently developed with more than 75% impermeable surfaces, including paving and roofed-structures, and does not currently provide stormwater management meeting the standards applicable on the date of filing.	

Technical Staff explains how the application meets the listed Prerequisites (Exhibit 28(b), p. 13):

Transit & Infrastructure: the site is served by a 10" sewer line and an 8" water line, both running along the adjacent Kensington Parkway right-of-way. The proposed townhouse units will not require an upgrade to this service line, nor will the installation of a pump station be required. There are no signalized intersections within ¼ mile, so no signalized intersections within ¼ mile of the proposed development exceed the applicable congestion standard. Finally, the site is within the Bethesda-Chevy Chase Cluster, which is not in moratorium; the proposed development will not result in a utilization rate greater than 120 percent.

Vicinity & Facilities: the site is adjacent to a bicyclist route with 18 miles of trails and additional routes to commercial services in both Kensington and Chevy Chase both within 3 miles. The site is also adjacent to a pedestrian route that provides access to existing public parks within ¾ of a mile – Rock Creek Park and North Chevy Chase Local Park – with facilities that exceed 30 percent of the Planning Board's Recreation Guidelines requirements, including trails, natural areas, picnic and seating areas, playgrounds, and athletic facilities. (See Transportation Memo Attachment 3 [to the Staff Report])

Environment & Resources: At this time, the proposed development meets the following two environmental prerequisites:

1. *Prerequisite: The limits of disturbance for the development will not overlap any stream, floodplain, wetland or environmental buffer or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.*

The concept plan shows a floodplain boundary based on FEMA mapping extending onto the northeastern edge of the property. The plan respects the floodplain as mapped, including a 25-foot building restriction line. The floodplain represents the outermost boundary of the environmental buffer for Rock Creek adjacent to the property. This buffer incorporates the stream buffer, wetlands and wetland buffers, floodplain and steep slopes.

2. *Prerequisite: The site does not contain rare, threatened, or endangered (RT&E) species or critical habitats listed by the Maryland Department of Natural Resources.*

The Maryland Department of Natural Resources (DNR) issued a letter on May 2, 2014, indicating that DNR has no record of rare, threatened, or endangered species (RT&E) or critical habitats listed by the Maryland Department of Natural Resources on this site.

Based on this undisputed record, the District Council finds that the subject Floating zone application meets all the tests set forth in Section 5.1.3 for applying the requested TF-12 Zone to the site in question. Section 5.1.4 notes that an application for a Floating Zone must be approved

as a Local Map Amendment under Section 7.2.1. As discussed above, the application does meet the requirements set forth under Section 7.2.1. Section 5.1.5 is inapplicable to the zone sought in this case.

D. The Residential Floating Zones, their Purpose and Uses, as set forth in Section 5.2

Zoning Ordinance §59-5.2 lists the Residential Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards. The development standards are discussed in the next part of this Opinion. In the current part, we will address the remainder of Section 59-5.2.

Section 59-5.2.1 lists the Zones included as Residential Floating zones under the new Code:

Section 5.2.1. Zones

A. There are 3 Residential Floating zone categories.

B. Residential Floating zones are mapped using the zone's initials followed by a number indicating the maximum allowed units per acre approved by a Local Map Amendment under Section 7.2.1:

- 1. Residential Detached – Floating (RDF-#);*
- 2. Townhouse – Floating (TF-#); and*
- 3. Apartment – Floating (AF-#).*

The Zone sought in the instant case is the Townhouse Floating Zone, at a density of 12 units per acre. It is known by the shorthand label, TF-12.

Section 5.2.2. Purpose

The purpose of the Residential Floating zones is to:

- A. allow flexibility in residential development, including site layout, lot size, and placement;*
- B. allow residential development of a certain size to provide limited accessory commercial uses for the daily needs of the community; and*
- C. provide residential development that is compatible with the surrounding neighborhood.*

The Applicant in this case has utilized the flexibility of the zone to plan a residential development that will be compatible with the surrounding community, as previously discussed. No accessory on-site commercial uses are planned due to the small size of the development. Based on the undisputed record, the District Council finds that the subject Floating zone application satisfies the purpose of the TF-12 Zone.

Part A. of Section 5.2.3. lists the permitted land uses allowed in the Residential Floating Zones. Only the portion of the table that applies to the Townhouse Floating zones is reproduced below:

<i>Floating Zone Category</i>	<i>Approved Density</i>	<i>All uses Allowed</i>
<i>TF</i>	<i>< 12 units/acre and < 150 total units</i>	<i>TLD</i>
	<i>< 12 units/acre and ≥ 150 total units</i>	<i>TLD, CRN</i>
	<i>≥ 12 units/acre and < 150 total units</i>	<i>TMD, THD</i>
	<i>≥ 12 units/acre and ≥ 150 total units</i>	<i>TMD, THD, CRN</i>

As shown in the above chart, for a TF-12 development of 16 units, at a density greater than or equal to 12 units per acre, the Euclidean Zone uses of Townhouse Medium Density (TMD) and Townhouse High Density (THD) would be permitted. Looking at the Use Table in Section 59-3.1.6, "Townhouse Living," which is the only use proposed in this case, is a permitted use in both the TMD and THD Zones.

Part B. of Section 5.2.3. contains provisions which govern the permitted uses, as shown below:

B. Use Provisions

- 1. In the Residential Floating zones the maximum area of the site for nonresidential uses is 25% and the maximum nonresidential density on that 25% of the site is 0.25 FAR.*
- 2. The lot on which any approved commercial uses are located must be separated from the boundary of the tract included in the Local Map Amendment by residential lots or open space and must not share a lot line with any properties in a Residential zone not included in the Local Map Amendment.*
- 3. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses to support the necessary findings of approval under Section 7.2.1.*

None of the listed restrictions apply to the proposed development because no non-residential uses are proposed; nor are binding elements proposed.

A table in Section 5.2.4 lists the permitted building types in the Residential Floating Zones. Not surprisingly, that table indicates that townhouses are an allowed building type in the TF Zones.

B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.

There are no bidding elements proffered in this case; however, Applicant's Floating Zone Plan calls for only townhouses.

Based on this undisputed record, the District Council finds that the subject Floating zone application satisfies all the requirements set forth in Section 5.2 for the purpose, permitted uses and allowed building types in the requested TF-12 Zone.

E. Development Standards for the Zone as set forth in Section 5.2.5.

Development Standards for the TF-12 Zone are spelled out in Zoning Ordinance §59-5.2.5:

A. Density

1. Residential Density

a. If a Floating zone is recommended in a master plan, residential density must not exceed that recommendation, except where MPDUs above the minimum required or TDRs are provided.

b. If a Floating zone is not recommended in a master plan and the base zone is Residential, the following residential density limits apply, calculated on site area:

Pre-Existing Euclidean Zone	Base Lot/Site Size	Base Density in Units per Acre	Maximum Allowed Density in Units per Acre		
			Less than 3 times the base lot/site size	3 to <6 times the base lot/site size	At least 6 times the base lot/site size
RE-2, RE-2C	2 acres	0.50	0.50	0.75	1.00
RE-1	40,000 SF	1.09	1.09	1.63	2.18
R-200	20,000 SF	2.18	2.18	3.27	4.36
<i>R-90</i>	<i>9,000 SF</i>	<i>4.84</i>	<i>4.84</i>	<i>7.26</i>	<i>12.00</i>
R-60	6,000 SF	7.26	7.26	10.89	14.52
R-40	4,000 SF	10.89	10.89	16.33	21.78
TLD	20,000 SF	9.00	9.00	13.50	18.00
TMD	20,000 SF	12.00	12.00	18.00	24.00
THD	40,000 SF	15.00	15.00	22.50	30.00
R-30	12,000 SF	14.50	14.50	21.75	29.00
R-20	16,000 SF	21.70	21.70	32.55	43.40
R-10	20,000 SF	43.50	43.50	65.25	87.00

Because the TF-12 Zone was not specifically recommended in the Kensington-Wheaton Master Plan, Subsection 5.2.5.A.1.a. does not apply to this development, but Subsection 5.2.5.A.1.b. does apply, and we must use the above table to determine the maximum allowed density for the development. Turning to the italicized row in the above table, we see that for a site that has an R-90 pre-existing Euclidean Zone, the base lot size is 9,000 square feet, and the

base density is 4.84 units per acre. Since the tract size in this case is 61,349 square feet (1.41 acres), it is over 6 times larger than the base lot size of 9,000 square feet (*i.e.*, $61,349/9,000 = 6.82$). That figure points us to the final column in the table, which establishes the permitted density of 12 units per acre for this development. Applying that permitted density to the tract size of 1.41 acres yields the allowed number of townhouse units as 16 (1.41 acres X 12 DUs/acre = 16.92 DU maximum).

c. If a Floating zone is not recommended in a master plan and the base zone is non-Residential, the following residential density limits apply, calculated on tract area:

* * *

This subsection (§5.2.5.A.1(c)) is not applicable to this development because it will be residential, and not commercial.

2. Commercial Density

Commercial density, if allowed under Section 5.2.3, is limited to 0.25 FAR, calculated on 25% of the site's land area

This subsection (§5.2.5.A.2) is not applicable to this development because it will be residential, and not commercial.

3. Modifications by Applicant

An applicant may limit density below the maximum allowed by Section 5.2.5.A to support the necessary findings of approval under Section 7.2.1.

This subsection (5.2.5.A.3) is not applicable to this development because the Applicant is not limiting density to satisfy other provisions.

B. Setback and Height

1. If a Floating zone is recommended in a master plan, height must not exceed that recommendation.

2. Maximum height and setbacks are established by the floating zone plan.

3. Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.

Since the TF-12 Zone was not specifically recommended in the Kensington-Wheaton Master Plan, Subsection 5.2.5.B.1. does not apply to this development, but Subsections 5.2.5.B.2 and B.3. do apply in determining required setbacks and maximum heights. In accordance with Subsection 5.2.5.B.2., the Floating Zone Plan (Exhibit 38(a)) establishes a maximum height of 50 feet and the following setbacks: 2 feet from any detached dwelling lot or land classified in a one-family detached residential zone; 10 feet from any public street; 2 feet from Adjoining Lot (Side-End Unit); and 4 feet from Adjoining Lot (Rear).

C. Lot Size

Minimum lot sizes are established by the floating zone plan.

This provision calls for the minimum lot sizes to be established by the Floating Zone Plan. The term "minimum lot sizes" refers to the individual lots for each proposed unit. Although the site diagram on the revised Floating Zone Plan shows proposed townhouse lots of approximately 1,680 square feet each, the Project Data Table on the revised Floating Zone Plan (Exhibit 38(a)) specifies a minimum lot size of 1,000 square feet, with a note indicating that lot sizes depicted in the site diagram may be reduced due to final adjustments made at preliminary plan review. The District Council agrees that the exact size of the individual lots will be worked out at site plan and preliminary plan review, and that the revised FZP gives sufficient detail regarding anticipated lot sizes for review at the rezoning stage.

D. Coverage

Minimum open space must be provided as a percentage of the site area as determined by the most intense building type approved and density in units per acre.

Open Space Required				
Building Type	Minimum Open Space Required Based on Units per Acre			
	1-19 units/acre	20-39 units/acre	40-59 units/acre	60+ units/acre
Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use or conditional use allowed in the zone	0%	10%	10%	15%
Duplex	0%	10%	15%	20%
<i>Townhouse</i>	10%	15%	20%	25%
Apartment, Multi Use, or General Building	15%	20%	25%	30%

Since the building type will be townhouses, and the proposed density is 12 units per acre, the above table calls for a minimum of 10% open space in the development. Applicant's Floating Zone Plan (Exhibit 38(a)) proposes to provide 20% open space, thus far exceeding the statutory minimum.

E. General Requirements

- 1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.2.3 for each applicable residential or commercial area.*
- 2. The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to*

allow the District Council to make the necessary findings of approval under Section 7.2.1.

Recreational facilities, screening and landscaping will be evaluated at site plan review. The minimum amount of parking is determined in Section 59-6.2.4.B., which calls for a minimum of 2 parking spaces per dwelling unit for townhouse living outside of a Parking Lot District, as shown below in the portion of the Table in Section 6.2.4.B that applies to “Residential Household Living.”

USE or USE GROUP	Metric	Agricultural, Rural Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area		Outside a Parking Lot District or Reduced Parking Area
		Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
Household Living					
Single-Unit Living Two-Unit Living Townhouse Living	<i>Dwelling Unit</i>	<i>2.00</i>	<i>1.00</i>	<i>2.00</i>	<i>2.00</i>
Multi-Unit Living	Efficiency Dwelling Unit	1.00	1.00	1.00	1.00
	1 Bedroom Dwelling Unit	1.25	1.00	1.25	1.25
	2 Bedroom Dwelling Unit	1.50	1.00	1.50	1.50
	3+ Bedroom Dwelling Unit	2.00	1.00	2.00	2.00

As mentioned previously in this Opinion, each unit will have its own two-car garage, plus each of the units will have a driveway which is 20 feet wide, and can accommodate the parking of two additional vehicles. Tr. 79-80. Thus, Applicant’s plan will provide double the number of parking spaces required by the Zoning Ordinance.

Based on this undisputed record, the District Council finds that the subject Floating zone application meets all the development standards set forth in Section 5.2.5. of the Zoning Ordinance.

F. The Impact of the Abandonment of Glenmoor Drive

The final zoning issue in this case concerns the abandonment by the County of the Glenmoor Drive right-of-way adjacent to the single-family homes in the subject site. This project could not have worked without the abandonment of Glenmoor Drive. As mentioned earlier in this Opinion, the segment of Glenmoor Drive in question was recommended for abandonment by the

County Executive, and the abandonment was approved by the Council. SHA indicated that it had no interest in its 50% share of the abandoned roadbed. Exhibit 36(d). Because rezonings cannot be made conditionally, the Hearing Examiner recommended that the Council not act on the instant rezoning application until it decided the abandonment application. The Council having approved the abandonment of Glenmoor Drive, the rezoning may now be unconditionally approved.

Conclusion

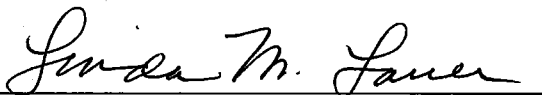
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the new Zoning Ordinance that went into effect on October 30, 2014, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i). More specifically, the evidence demonstrates compliance with Zoning Ordinance §59-7.2.1.E., which spells out the general requirements for approval of a rezoning to a Floating zone, and with Sections 59-5.1.2., 59-5.1.3., 59-5.2.1., 59-5.2.2., 59-5.2.3., 59-5.2.4. and 59-5.2.5, which together detail the intent, purposes, and standards of the proposed TF-12 Zone. For these reasons, the application will be approved in the manner set forth below.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, approves the following resolution:

Zoning Application No. H-101, requesting reclassification from the R-90 Zone to the Townhouse Floating (TF-12) Zone of 1.41 acres (61,349 square feet) of land known as Lots 1, 2, 3, and Part of 4, Block A of the Rolling Hills Subdivision, located at 9213 Kensington Parkway and 3619, 3621 and 3623 Glenmoor Drive, Chevy Chase, Maryland, and the adjacent Glenmoor Drive right-of-way abandoned by the County, is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 38(a); provided that the Applicant submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §59-7.2.1.H.1.b. of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council